

## **REMARKS**

### **I. Prosecution History.**

In response to a second restriction requirement (Paper No. 10 dated March 20, 2003) claim 58 was elected with traverse. In a telephone conversation between the examiner and the undersigned on May 7, 2003, the examiner notified the undersigned of the allowance of claim 58. The undersigned discussed with the examiner that claims 32-56 should properly be issued with claim 58 and faxed an informal amendment to the examiner on May 15, 2003 and July 16, 2003. These informal amendments do not appear to have been considered by the Patent Office.

Claims 1-31 and 57 are canceled and claims 32, 41, and 49 have been amended herein.

### **II. Explanation of amendments.**

The undersigned wishes to thank the examiner for the telephone discussion of May 7, 2003 and the subsequent office action dated May 28, 2003, relating to the allowance of claim 58. As discussed, claims 32, 41, and 49 are related to claim 58 as a subcombination and combination and may properly be made dependent on claim 58.

In addition, because the inventions of groups Groups IX-XIV are species claims of generic claim 58, M.P.E.P. § 806.02(e) advises that:

“Whenever a generic claim is found to allowable in substance, even though it is objected to or rejected on merely formal grounds, action on the species claims shall thereupon be given as if the generic claim were allowed. The treatment of the application should be as indicated in MPEP §809.03(b), §809.02(c), or §809.02(d).”

Because species claims are presented and an election of a single species has been made, §809.02(c) applies. Under §809.02(c)(B)(1) when all claims to each of the additional species are embraced by an allowable generic claim as provided by 37 CFR 1.141, applicant must be advised of the allowable generic claim and that claims drawn to the nonelected species are no longer withdrawn since they are fully embraced by the allowed generic claim. Restriction and withdrawal of the claims of Groups IX-XIV and XVI, therefore, is improper and reconsideration and withdrawal of the restriction requirement is solicited.

A petition for reconsideration of the restriction requirement has been filed concurrently with this amendment.

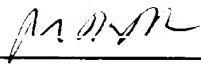
### CONCLUSION

It is submitted that the claims are now of proper form and scope for allowance. An early and favorable action on the merits is respectfully requested. Should the examiner wish to discuss the foregoing, or any matter of form in an effort to advance this application toward allowance, the examiner is urged to telephone the undersigned at the indicated number.

Respectfully submitted,

MARSHALL GERSTEIN & BORUN LLP  
6300 Sears Tower  
233 South Wacker Drive  
Chicago, Illinois 60606-6402

July 28, 2003

  
\_\_\_\_\_  
Mark H. Hopkins, Ph.D.  
Reg. No. 44,775